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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

STEVEN BETANCOURT, Plaintiff and Respondent, v. CEZAR CATALIN PUICA, Defendant and Appellant.	2d Civil No. B289771 (Super. Ct. No. 56-2015-00469660-CU-HR-VTA) (Ventura County)

Cezar Catalin Puica appeals an order granting a civil harassment restraining order (Code Civ. Proc. § 527.6) enforceable until April 5, 2021. We conclude, among other things, that: 1) the trial court did not abuse its discretion by denying Puica's request for a continuance; 2) substantial evidence supports the order; and 3) remarks by the trial judge about the law made during the hearing on the injunction does not constitute reversible error. We affirm.

FACTS

Puica and Steven Betancourt are neighbors. On July 14, 2015, Betancourt filed a request for a civil harassment restraining order against Puica. Betancourt said that Puica had "[p]ulled a gun" on his gardener, told him his children were not to play in the street, and told him to "get [a] new [gardener]." Puica also made a threat stating, "This is your first [and] last warning." He then told Betancourt, "Choose life or death."

On the day Betancourt filed the request, the trial court issued a temporary restraining order (TRO). It prohibited Puica from harassing, intimidating, or threatening Betancourt, his wife, or his children.

Betancourt contacted the police. Puica was arrested and initially charged with "brandishing a replica gun" and "disturbing the peace."

On August 3, 2015, the date of the hearing on a permanent restraining order, Puica's attorney appeared. Puica was not present. The trial court continued the hearing because of the pendency of the criminal case against Puica. It reissued a TRO. On December 16, 2015, the court continued the hearing on the permanent restraining order because of the pending criminal case. The court issued a new TRO. From February 2016 through February 2018, the court repeatedly continued the hearing dates on the permanent civil harassment injunctive order because of the pendency of the criminal case against Puica.

At a hearing on February 8, 2018, the court was notified that Puica had been diagnosed with cancer and was receiving chemotherapy. It continued the hearing to April 6, 2018.

Puica's counsel appeared at the April 6 hearing. Puica was not present. Puica's counsel told the court that Puica is "doing

daily chemo right now." He requested a continuance. Betancourt's counsel objected. The court denied the request, stating that "justice delayed is justice denied."

Betancourt testified that in July 2015 Puica told him, "Your kids will not play in the street and you will get a new gardener. This is your first and final warning." Puica then said, "Choose life or choose death." When Betancourt heard those words, his "blood just went up." He told his children to "stay inside the house."

This was an older event, but there were a dozen additional incidents where Betancourt "felt threatened" by Puica. These included Puica's acts of "filming" his children, yelling at them, and calling them "monkeys and other names." There were times when Puica said "they are going to deport all the Mexicans" and Puica started spitting. Betancourt kept his children inside the house. Puica engaged in these acts after Betancourt had obtained a restraining order against him. In January 2017, Betancourt's children were riding their bikes. They heard Puica "cussing" at them and calling them "monkeys." Puica said, "Happy F'in New Year." The children "freaked out."

Puica would drive his car down the street and start "ranting and making threats." He told Betancourt, "You are going to pay." He made that threat "several times." He would raise his hands and "flip[] [them] off" with the middle fingers of his hands. Since the initial restraining order issued, Betancourt documented a dozen incidents where he called police because of Puica's actions. Betancourt said Puica is "trying to intimidate and scare my kids . . . . He threatened my life and my children's lives."

In a recent incident one and one-half to two months before the hearing, the Betancourts went to a park for their son's baseball practice. Puica was already there. When Steven Betancourt went to get a ball bag, Puica "[came] to the front." Betancourt told him, "I have a restraining order . . . ." Puica followed them and filmed his children.

Hector Revelez, Betancourt's gardener, testified that on July 13, 2015, Puica told him, "[G]et out of here. Don't make a noise. Be . . . smart. [I'm] going to shoot you in the head." Puica had what looked like a rifle in his hands. He pointed it at Revelez. Revelez reported this to the police.

James Griffin, a neighbor of the Betancourts, testified he filmed an incident on December 30, 2015, after the restraining order issued. Puica was "yelling at [the Betancourt's] house." He was "making gestures" with his "[m]iddle finger" and "grabbing -- pointing towards his penis."

Regina Betancourt testified that their "surveillance camera is always recording." After the initial restraining order issued, she saw Puica on video "making gestures" to "our house." These included "[f]lipping it off" and "yelling, talking towards our house."

The trial court issued the civil harassment restraining order against Puica.

DISCUSSION

Denying the Request for a Continuance

Puica contends the trial court erred by denying his request for a continuance of the hearing because he presented "documentation that [he] was undergoing cancer treatment."

" 'Generally, power to determine when a continuance should be granted is within the discretion of the court, and there

is no right to a continuance as a matter of law.' " (*Lucas v. George T. R. Murai Farms, Inc.* (1993) 15 Cal.App.4th 1578, 1586.) But discretion can be abused.

At the April 6, 2018, hearing, Puica's counsel appeared and advised the court that Puica was not present. He said, "[Puica's] cancer is getting more and more severe. They are doing daily chemo right now." He presented a short doctor's letter to confirm the chemotherapy treatments and he requested a continuance.

Betancourt's counsel objected. He said: 1) the "issue of chemo" was presented to the court *at a prior hearing* months earlier; 2) Betancourt was incurring extensive litigation costs; 3) the case had been pending for three years; and 4) Puica had pointed a "replica rifle" at Betancourt's gardener and had "threatened [his] client's life if the children didn't stop playing outside." He said this "is conduct that needs to be addressed by the Court."

The trial court denied the request to continue the hearing.

" 'The unavoidable absence of a party does not necessarily compel the court to grant a continuance.' " (*Ogburn v. Ogburn* (1963) 222 Cal.App.2d 95, 98.) "[T]here is no policy in this state of indulgence or liberality in favor of parties seeking continuances." (*County of San Bernardino v. Doria Mining & Engineering Corp.* (1977) 72 Cal.App.3d 776, 781.) "Rather, such parties must make a proper showing of good cause, in accordance" with the rules of court. (*Ibid.*)

Betancourt contends the request for the continuance did not comply with the rules of court. He notes Puica's counsel did not file a written motion and did not supply "supporting declarations" as required by the rules. (Cal. Rules of Court, rule 3.1332(b); *Mahoney v. Southland Mental Health Associates*

Medical Group (1990) 223 Cal.App.3d 167, 171, fn. 1.) On the day of trial Puica's counsel orally requested a continuance, but Betancourt and his witnesses were present and ready to testify.

Appellate courts have upheld decisions denying continuances where: 1) the continuance was requested on the "day set for trial"; 2) the opposing party's witnesses were ready to testify; 3) there was no written motion for a continuance; and 4) the request for continuance was not accompanied by supporting declarations. (*County of San Bernardino v. Doria Mining & Engineering Corp.*, *supra*, 72 Cal.App.3d at p. 783.) Here, all of these factors are present.

But this case also involves the illness of a party. "[I]llness of a party is considered good cause for granting the continuance of a trial date, *provided*, however, that the illness is supported, wherever possible, by an *appropriate declaration of a medical doctor*, stating the nature of the illness and the anticipated period of any incapacity." (*In re Marriage of Teegarden* (1986) 181 Cal.App.3d 401, 406, italics added.)

Puica's counsel did not submit a doctor's declaration. He submitted a four-sentence doctor's letter. It was not a current medical report. It was dated March 23, 2018. The doctor did not affirmatively state that Puica could not attend trial on April 6. Instead, in qualified language, she said that as a result of Puica's future medical treatments, he would "likely [be] unable to attend court sessions or interrogations."

Betancourt contends this letter "does not even appear" that it was prepared "to support [Puica's] request" for a continuance. He claims it was not "competent evidence supporting the request" and not a valid substitute for a declaration. He argues that the

request to continue consequently was properly denied because it was "procedurally defective."

But the trial court did not deny the continuance solely on procedural grounds. It admitted the letter as an exhibit even though the doctor's statements were not made under penalty of perjury. It then considered a variety of factors before it ruled on the request.

The initial temporary restraining order was issued on July 14, 2015. But the hearing on the permanent civil harassment injunctive order had been continued numerous times between 2015 and 2018 because of the pendency of an "ongoing criminal case" against Puica. The trial court said, "As a courtesy, we often will allow these civil cases to trail criminal cases, [but this] one took an extraordinarily long time." The court considered Puica's medical condition and said, "I'm not unsympathetic to his plight . . . ."

But the trial court also properly considered the long history of this case in denying the request. (*County of San Bernardino v. Doria Mining & Engineering Corp.*, *supra*, 72 Cal.App.3d at p. 783.) It noted that Puica had previously received the benefit of numerous continuances. Puica's counsel agreed that this case "has been going on for over three years now." The court noted other relevant factors including the impact of delays on Betancourt. It said, "[W]e're losing witnesses." It considered the increasing cost of this litigation as a result of the numerous delays.

Additionally, the parties note that on February 8, 2018, the trial court granted a continuance after being informed that Puica was receiving chemotherapy. Betancourt notes that at this prior hearing the court warned the parties that the case would proceed

to trial on April 6. The court had also granted continuances for Puica in March, May, and September 2017. He was granted another continuance in July 2016. The record reflects that the case had been continued on numerous other occasions for a variety of reasons.

At the April 6 hearing, the trial court found that further delay was not justified. There is a need for a prompt resolution of this type of injunction. The goal is " 'to provide expedited injunctive relief to victims of "harassment." ' " (*Kobey v. Morton* (1991) 228 Cal.App.3d 1055, 1059; Code Civ. Proc., § 527.6, subds. (f) & (g).) That goal is undermined by extensive delays. Betancourt claimed that his family was subjected to long-standing and recent harassment by Puica. As the trial court correctly noted, "[A]t some point, justice delayed is justice denied." Puica has not shown an abuse of discretion.

Substantial Evidence

Puica contends there was insufficient evidence to support the issuance of the civil harassment restraining order. We disagree.

In reviewing the sufficiency of the evidence, we draw all reasonable inferences in support of the judgment. We do not weigh the evidence or decide the credibility of the witnesses. (*Alinda V. v. Alfredo V.* (1981) 125 Cal.App.3d 98, 100-101.)

"In order to obtain a restraining order under section 527.6, a trial court needs only to find unlawful harassment exists and that it is probable that an unlawful act will occur in the future." (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 502.) "As defined, harassment is either (1) unlawful violence, (2) a credible threat of violence, or (3) a course of conduct." (*Ibid.*, italics omitted.)

A course of conduct involving harassment includes "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose" which involves "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose." (Code Civ. Proc., § 527.6, subd. (b)(1) & (3).)

Here, Betancourt's testimony shows that Puica engaged in a pattern of conduct to harass Betancourt and his children. Betancourt testified that Puica "threatened [his] life and [his] children's lives" and was "trying to intimidate and scare [his] kids." Puica initially made a death threat telling Betancourt to "choose life or choose death." He threatened Betancourt's gardener with a "replica rifle." Betancourt said after these initial threats there were "a dozen" additional incidents where Puica tried to intimidate Betancourt and his children. The last incident occurred in a park one and one-half to two months before the hearing. Puica followed Betancourt and filmed his children. He engaged in these acts after the issuance of a temporary restraining order against him.

The Trial Court's Statements

Puica contends the trial court made statements during the hearing which show it misunderstood the requirements for issuing a civil harassment permanent injunction. He claims he is entitled to a reversal because of those remarks.

Puica notes that during trial the court referred to Code of Civil Procedure section 527.6 and said, "I don't believe there's any future likelihood requirement, as I look at this statute." Code of Civil Procedure section 527.6, subdivision (i) provides, in relevant part: "If the judge finds by clear and convincing evidence that

unlawful harassment exists, an order shall issue prohibiting the harassment." But, as Puica notes, in *Russell v. Douvan* (2003) 112 Cal.App.4th 399, 402, the Court of Appeal reviewed this statute and held that "[a]n injunction is authorized only when it appears that wrongful acts are likely to recur."

Puica claims the trial court's incorrect remarks impeached the validity of the order and requires that it be vacated. We disagree. "There are instances where a court's comments may be valuable in illustrating the trial judge's theory *but they may never be used to impeach the order or judgment*." (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 591, italics added.) On appeal, the trial court's ultimate findings are reviewed. A court's incorrect oral remarks or offhand comments made earlier do not invalidate an otherwise properly issued judgment. (*In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 646-647.)

After making the remarks Puica highlights, the trial court orally presented its findings. In those findings, it did not repeat that remark. Instead, it recited the statutory grounds for the issuance of the order. It said that "harassment includes . . . [a] knowing or a *willful course of conduct* that seriously alarms, annoys or harasses a person" and the "*course of conduct* must be such as would cause a reasonable person to suffer substantial emotional distress" and "must . . . cause [that] distress." (Italics added.) The court said Betancourt met his burden of proof for the order. Its findings show that the court found Betancourt proved a willful course of conduct of harassment as required by the statute. In its written order, the court issued eight "stay-away orders" against Puica to prevent him from being in contact with Betancourt, his family, his home, his job, his vehicle, and his

children's school. The issuance of these orders indicates that the court found it necessary to currently protect the Betancourts from Puica's harassment. (*Harris v. Stampolis*, *supra*, 248 Cal.App.4th at p. 501.)

In addition, the trial court's remarks should be considered in context. They were made at trial after Puica's counsel suggested the issuance of a new injunctive order would merely punish Puica for an old act, such as the death threat. The court responded, "[T]hat's not what we're doing." It then said it could consider the "previous conduct that's proven after notice and an opportunity to be heard" in making its decision. The court did not err. It was not precluded "from considering the existence of those facts *in evaluating the need for a new order*." (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 189, italics added.)

Puica notes that in *Russell*, the Court of Appeal reversed where the trial court made an incorrect statement regarding the statutory standard. But that case is distinguishable. There, the court determined that a prior "single act of unlawful violence," by itself, was insufficient to authorize an injunction. (*Russell v. Douvan*, *supra*, 112 Cal.App.4th at p. 404.) Here, by contrast, the trial court found a willful course of conduct. Where a trial court issues an injunction, appellate courts generally "may infer that the trial court impliedly found that it was reasonably probable that future harassment would occur." (*Harris v. Stompolis*, *supra*, 248 Cal.App.4th at p. 501.)

Puica suggests there was no evidence of any recent conduct to support a finding of a likelihood of future harassment. But Betancourt testified that two months before the hearing, there was another incident in a park. He said he told Puica that he had a restraining order against him, but Puica nevertheless

followed him in the park and filmed his children. He testified about the impact this had on his son. He said his son "freezes every time he sees [Puica]."

"Behavior that may not alone constitute an intentionally harassing course of conduct logically still might show *an intention to resume or continue an already established course of harassing conduct*." (*R.D. v. P.M.*, *supra*, 202 Cal.App.4th at p. 190, italics added.) " 'Behavior that may not alone constitute [unlawful harassment] logically still might show an intention to resume or continue [unlawful harassment].' " (*Harris v. Stampolis*, *supra*, 248 Cal.App.4th at p. 501.) Puica has not shown why the trial court could not reasonably draw these inferences.

Moreover, Puica has not made a sufficient showing for reversible error. " '[A]n appellate court reviews the action of the court and not the reasons given for its action; and . . . there can be no prejudicial error from erroneous logic or reasoning if the decision itself is correct.' " (*El Escorial Owners' Assn. v. DLC Plastering, Inc.* (2007) 154 Cal.App.4th 1337, 1352-1353.) Betancourt's testimony and the testimony of his wife and other witnesses showed that Puica's animosity for Betancourt and his children was continuous and unabated. A trier of fact could reasonably infer that there was a likelihood of future harassment and a necessity for this injunction given the course of conduct about which Betancourt testified, the high number of incidents, the death threat, the degree of animosity Puica had for Betancourt, the violation of previous restraining orders, the proximity of these neighbors, and this recent incident.

DISPOSITION

The order is affirmed. Costs are awarded to respondent.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Roger L. Lund, Judge

Superior Court County of Ventura

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